

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN ASSEMBLY JUNE 24, 2013

AMENDED IN SENATE MAY 9, 2013

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 610**

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**Introduced by Senator Jackson**

February 22, 2013

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An act to *amend Sections 20010, 20020, 20025, and 20035 of, and to add Article 2.5 (commencing with Section 20016) to Chapter 5.5 of Division 8 of, the Business and Professions Code, relating to franchises.*

LEGISLATIVE COUNSEL'S DIGEST

SB 610, as amended, Jackson. Franchises.

The California Franchise Relations Act sets forth certain requirements related to the termination, nonrenewal, and transfer of franchises between a franchisor, subfranchisor, and franchisee, as those terms are defined. Existing law provides that any condition purporting to bind any person to waive compliance with the act is contrary to public policy and void.

~~This bill would require these parties to deal with each other in good faith, as defined, and prohibit a franchisor or subfranchisor from restricting the right of a franchisee to join or participate in an association of franchisees to the extent the restriction is prohibited by existing law. The bill would authorize a franchisee to bring an action against a franchisor or subfranchisor who offers to sell, sells, fails to renew or transfer, or terminates a franchise in violation of these provisions for temporary and permanent injunctive relief, and damages caused thereby, or for rescission or other relief deemed appropriate by the court. The~~

~~bill would additionally authorize a court in its discretion to award reasonable costs and attorney's fees to a prevailing plaintiff. The bill would also authorize a franchisor or subfranchisor who becomes liable to make payments for a violation of these provisions to recover contributions from any person who, if sued separately, would also have been liable to make the same payments. The bill would prohibit a franchisor or subfranchisor from requiring a franchisee to waive its rights as a condition of doing business with the franchisor or subfranchisor, and would provide that any waiver that is required as a condition of doing business shall be presumed unenforceable. The bill would authorize a franchisor or subfranchisor to enforce a waiver of rights under these provisions only if the waiver is knowing, voluntary, and not made as a condition of doing business with the franchisor or subfranchisor.~~

*This bill would provide that a condition of a franchise agreement requiring the franchisee to waive the implied covenant of good faith and fair dealing is contrary to public policy and void. The bill would prohibit a franchise agreement from restricting the right of a franchisee to join or participate in an association of franchisees to the extent the restriction is prohibited by existing law. The bill would prohibit a franchise agreement from preventing a franchisee from selling or transferring a franchise or a part of the interest of a franchise to another person, except as provided. The bill would prohibit a franchise agreement from giving a franchisee a right to sell, transfer, or assign the franchise, or a right thereunder, without the consent of the franchisor, as provided. The bill would prohibit a franchise agreement from allowing the transferring franchisee to fail to notify the franchisor of the franchisee's decision to sell, transfer, or assign the franchise, as provided.*

*Existing law prohibits a franchisor from terminating a franchise agreement prior to the expiration of its term, except for good cause, as defined, and upon the occurrence of specified events.*

*This bill would prohibit a franchisor from terminating a franchise agreement prior to the expiration of its term unless there is a substantial and material breach on the part of the franchisee of a lawful requirement of the franchise agreement, except as otherwise provided.*

*Existing law prohibits a franchisor from failing to renew a franchise agreement unless the franchisor provides the franchisee at least 180 days prior written notice of its intention not to renew and specified conditions are met.*

*Existing law requires a franchisor that terminates or fails to renew a franchise, other than in accordance with specified provisions of law, to offer to repurchase from the franchisee the franchisee's resalable current inventory, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

1        *SECTION 1. Section 20010 of the Business and Professions*  
2        *Code is amended to read:*

3     20010. Any condition, stipulation, or provision purporting to  
4     bind any person to waive compliance with any provision of this  
5     law *or to waive the implied covenant of good faith and fair dealing*  
6     is contrary to public policy and void.

8        *SEC. 2.* Article 2.5 (commencing with Section 20016) is added  
9        to Chapter 5.5 of Division 8 of the Business and Professions Code,  
10        to read:

11  
12 Article 2.5. Relationships Between Franchisor or Subfranchisor  
13 and Franchisees

~~20016. Without limiting the other provisions of this chapter,~~  
~~the following specific rights and prohibitions shall govern the~~  
~~relations between a franchisor, subfranchisor, and franchisee:~~

~~(a) (1) These parties shall deal with each other in good faith in the performance and enforcement of the franchise agreement.~~

1     ~~(2) “Good faith” for purposes of this subdivision means honesty~~  
2     ~~in fact and the observance of reasonable commercial standards of~~  
3     ~~fair dealing in the trade.~~

4     ~~(b) A franchisor or subfranchisor shall not restrict~~  
5     ~~20016. It is unlawful for a franchise agreement to do any of~~  
6     ~~the following:~~

7     ~~(a) Restrict the right of a franchisee to join or participate in an~~  
8     ~~association of franchisees to the extent the restriction is prohibited~~  
9     ~~by Section 31220 of the Corporations Code.~~

10    ~~(b) (1) Prevent a franchisee from selling or transferring a~~  
11    ~~franchise or a part of the interest of a franchise to another person.~~  
12    ~~A franchisee shall not, however, have the right to sell, transfer, or~~  
13    ~~assign the franchise, or a right thereunder, without the consent of~~  
14    ~~the franchisor except that the consent shall not be unreasonably~~  
15    ~~withheld.~~

16    ~~(2) (A) Allow the transferring franchisee to fail, prior to the~~  
17    ~~sale, transfer, or assignment of a franchise or the sale, assignment,~~  
18    ~~or transfer of all, or substantially all, of the assets of the franchised~~  
19    ~~business or a controlling interest in the franchised business to~~  
20    ~~another person, to notify the franchisor of the franchisee’s decision~~  
21    ~~to sell, transfer, or assign the franchise. The notice shall be in~~  
22    ~~writing and shall include all of the following:~~

23    ~~(i) The proposed transferee’s name and address.~~

24    ~~(ii) A copy of all of the agreements relating to the sale,~~  
25    ~~assignment, or transfer of the franchised business or its assets.~~

26    ~~(iii) The proposed transferee’s application for approval to~~  
27    ~~become the successor franchisee. The application shall include~~  
28    ~~forms and related information generally utilized by the franchisor~~  
29    ~~in reviewing prospective franchisees, if those forms are readily~~  
30    ~~made available to existing franchisees. As soon as practicable~~  
31    ~~after receipt of the proposed transferee’s application, the~~  
32    ~~franchisor shall notify the franchisee and the proposed transferee~~  
33    ~~of information needed to make the application complete.~~

34    ~~(B) For the franchisor, to fail, on or before 60 days after the~~  
35    ~~receipt of all of the information required pursuant to subparagraph~~  
36    ~~(A), or as extended by a written agreement between the franchisor~~  
37    ~~and the franchisee, to notify the franchisee of the approval or the~~  
38    ~~disapproval of the sale, transfer, or assignment of the franchise.~~  
39    ~~The notice shall be in writing and shall be personally served or~~  
40    ~~sent by certified mail, return receipt requested, or by guaranteed~~

1 *overnight delivery service that provides verification of delivery*  
2 *and shall be directed to the franchisee. A proposed sale,*  
3 *assignment, or transfer shall be deemed approved, unless*  
4 *disapproved by the franchisor in the manner provided by this*  
5 *subdivision. If the proposed sale, assignment, or transfer is*  
6 *disapproved, the franchisor shall include in the notice of*  
7 *disapproval a statement setting forth the reasons for the*  
8 *disapproval.*

9 *(3) In an action in which the franchisor's withholding of consent*  
10 *under this subdivision is an issue, whether the withholding of*  
11 *consent was unreasonable is a question of fact requiring*  
12 *consideration of all the existing circumstances.*

13 ~~20017. (a) A franchisee may bring an action against a~~  
14 ~~franchisor or subfranchisor who offers to sell, sells, fails to renew~~  
15 ~~or transfer, or terminates a franchise in violation of Section 20016~~  
16 ~~for temporary and permanent injunctive relief, and for damages~~  
17 ~~caused thereby, or for rescission or other relief deemed appropriate~~  
18 ~~by the court. In addition, the court may in its discretion award~~  
19 ~~reasonable costs and attorney's fees to a prevailing plaintiff.~~

20 ~~(b) A franchisor or subfranchisor who becomes liable to make~~  
21 ~~payments under this section may recover contributions from any~~  
22 ~~person who, if sued separately, would have been liable to make~~  
23 ~~the same payments.~~

24 ~~20018. A franchisor or subfranchisor shall not require that the~~  
25 ~~franchisee waive any right provided for in this article as a condition~~  
26 ~~of doing business with the franchisor or subfranchisor. Any waiver~~  
27 ~~by the franchisee of a right under this article shall be knowing and~~  
28 ~~voluntary, and not made a condition of doing business with a~~  
29 ~~franchisor or subfranchisor. Any waiver that is required as a~~  
30 ~~condition of doing business with a franchisor or subfranchisor~~  
31 ~~shall be presumed involuntary, unconscionable, against public~~  
32 ~~policy, and unenforceable. The franchisor or subfranchisor may~~  
33 ~~enforce an agreement regarding any waiver of rights under this~~  
34 ~~article if the franchisor or subfranchisor shows that the agreement~~  
35 ~~was knowing, voluntary, and not made a condition of doing~~  
36 ~~business with the franchisor or subfranchisor.~~

37 *SEC. 3. Section 20020 of the Business and Professions Code*  
38 *is amended to read:*

39 ~~20020. Except as otherwise provided by this chapter, no a~~  
40 ~~franchisor may shall not terminate a franchise prior to the~~

1 expiration of its term, except for good cause. Good cause shall  
2 include, but not be limited to, the failure of the franchisee to  
3 comply with any upon a substantial and material breach on the  
4 part of the franchisee of a lawful requirement of the franchise  
5 agreement after being given notice thereof and a reasonable  
6 opportunity, which in no event need be more than 30 days, to cure  
7 the failure. agreement. If there is a substantial and material breach  
8 of a lawful requirement of the franchise agreement, the franchisor  
9 shall allow the franchisee 30 days to cure the failure before  
10 termination.

11 SEC. 4. Section 20025 of the Business and Professions Code  
12 is amended to read:

13 20025. No franchisor may fail to renew a franchise unless such  
14 Unless there has been a substantial and material breach on the  
15 part of the franchisee of a lawful requirement of the franchise  
16 agreement, the franchisor shall offer to the franchisee either a  
17 renewal of the franchise agreement under terms then being offered  
18 to new franchisees or under existing terms. If the franchisor has  
19 claimed a substantial and material breach on the part of the  
20 franchisee of a lawful requirement of the franchise agreement, the  
21 franchisor provides shall provide the franchisee at least 180 days  
22 prior written notice of its intention not to renew; and

23 (a) During the 180 days prior to expiration of the franchise the  
24 franchisor permits shall permit the franchisee to sell his business  
25 to a purchaser meeting the franchisor's then current requirements  
26 for granting new franchises, or if the franchisor is not granting a  
27 significant number of new franchises, the then current requirements  
28 for granting renewal franchises; or

29 (b) (1) The refusal to renew is shall not be for the purpose of  
30 converting the franchisee's business premises to operation by  
31 employees or agents of the franchisor for such franchisor's own  
32 account, provided, that nothing in this paragraph shall prohibit a  
33 franchisor from exercising a right of first refusal to purchase the  
34 franchisee's business; and

35 (2) Upon expiration of the franchise, the franchisor agrees shall  
36 not to seek to enforce any covenant of the nonrenewed franchisee  
37 not to compete with the franchisor or franchisees of the franchisor;  
38 or

39 (c) Termination would be is permitted pursuant to Section 20020  
40 or 20021; or

1 (d) The franchisee and the franchisor agree not to renew the  
2 franchise; or

3 (e) The franchisor withdraws from distributing its products or  
4 services through franchises in the geographic market served by  
5 the franchisee, provided that:

6 (1) Upon expiration of the franchise, the franchisor agrees not  
7 to seek to enforce any covenant of the nonrenewed franchisee not  
8 to compete with the franchisor or franchisees of the franchisor;  
9 and

10 (2) The failure to renew is not for the purpose of converting the  
11 business conducted by the franchisee pursuant to the franchise  
12 agreement to operation by employees or agents of the franchisor  
13 for such franchisor's own account; and

14 (3) Where the franchisor determines to sell, transfer, or assign  
15 its interest in a marketing premises occupied by a franchisee whose  
16 franchise agreement is not renewed pursuant to this paragraph:

17 (A) The franchisor, during the 180-day period after giving notice  
18 offers such franchisee a right of first refusal of at least 30 days'  
19 duration of a bona fide offer, made by another to purchase such  
20 franchisor's interest in such premises; or

21 (B) In the case of the sale, transfer, or assignment to another  
22 person of the franchisor's interest in one or more other controlled  
23 marketing premises, such other person in good faith offers the  
24 franchisee a franchise on substantially the same terms and  
25 conditions currently being offered by such other person to other  
26 franchisees; or

27 (f) The franchisor and the franchisee fail to agree to changes or  
28 additions to the terms and conditions of the franchise agreement,  
29 if such changes or additions would result in renewal of the  
30 franchise agreement on substantially the same terms and conditions  
31 on which the franchisor is then customarily granting renewal  
32 franchises, or if the franchisor is not then granting a significant  
33 number of renewal franchises, the terms and conditions on which  
34 the franchisor is then customarily granting original franchises. The  
35 franchisor may give the franchisee written notice of a date which  
36 is at least 30 days from the date of such notice, on or before which  
37 a proposed written agreement of the terms and conditions of the  
38 renewal franchise shall be accepted in writing by the franchisee.  
39 Such notice, when given not less than 180 days before the end of  
40 the franchise term, may state that in the event of failure of such

1 acceptance by the franchisee, the notice shall be deemed a notice  
2 of intention not to renew at the end of the franchise term.

3 *SEC. 5. Section 20035 of the Business and Professions Code*  
4 *is amended to read:*

5 20035. In the event a franchisor terminates or fails to renew a  
6 franchise other than in accordance with the provisions of this  
7 chapter, the franchisor shall offer to repurchase from the franchisee  
8 the franchisee's resalable current inventory meeting the franchisor's  
9 present standards that is required by the franchise agreement or  
10 commercial practice and held for use or sale in the franchised  
11 business at the lower of the fair wholesale market value or the  
12 price paid by the franchisee. The franchisor shall not be liable for  
13 offering to purchase personalized items which have no value to  
14 the franchisor in the business which it franchises. *reinstate the*  
15 *franchisee in accordance with the provisions of this chapter and*  
16 *shall pay all damages caused thereby, or, at the election of the*  
17 *franchisee, shall pay to the franchisee the fair market value of the*  
18 *franchise and franchise assets. A court shall be entitled to grant*  
19 *preliminary and permanent injunctions for violations of this*  
20 *chapter.*